

COPY

in Opinion

August 10, 1956

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CONCORD, N.H.

Honorable Lane Drinell
Governor of New Hampshire
Concord, New Hampshire

Dear Governor Drinell:

This is in response to your letter of July 20, 1956 concerning the right of state agencies, including state corporations, to appeal decisions of the Governor and Council to the Court. You requested that specific reference should be made to the University of New Hampshire and to awards of Workmen's Compensation.

It is the view of this office that no state agency or corporation, including the University of New Hampshire, may properly appeal to the Court any decision made by the Governor and Council in the course of the exercise of their executive function; and this includes awards of workmen's compensation.

By Const. Pt. Second, Art. 41, the Governor is the supreme executive magistrate of the State. He exercises his powers generally, by Constitution and by statute, with the Executive Council. The Governor and Council speak for the State in matters of an executive nature. Unless provided otherwise by statute, their decision is final and binding upon the State and its agencies. We know of no statute otherwise providing.

By RSA 281:5 the Governor and Council are given the power to award Workmen's Compensation to employees of the State suffering personal injuries arising in and out of their employment. While such function insofar as the injured employee is concerned may partake of a judicial quality, insofar as the affected State agencies are concerned the action of the Governor and Council is purely executive. The individual employee believing himself aggrieved by the action of the Governor and Council may be entitled to an appeal - although in the absence

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of a judicial precedent this is by no means certain. It is clear, however, that the agency concerned is not entitled to seek review of a determination of the Governor and Council by an appeal to the Court. The University, as a public Corporation, is not to stand in no different position in this regard than do other State agencies.

It should be noted, however, that workmen's compensation as ordinarily administered in private business is of an adversary nature, with the Court as the final arbiter of the facts of the case and the law applicable thereto. Either party - the employee or the employer - may call upon the Court in this regard. One might well be of the opinion, upon first impression, that the same principles should apply in State cases, affording to the State as well as to its employee the review of facts and law which can only be obtained in the judicial process. While the Legislature upon further consideration might well adopt such a view it is clear that as yet it has not done so. The State and until appropriate legislation be enacted so far as the State is concerned the matter will be administrative, and not one for the judiciary.

It will be appreciated, of course, that the foregoing is contrary to the tenor of my informal remarks on this subject before the Governor and Council. Such contrary conclusion is the inescapable result of an intensive study of the matter.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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